

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ARIZONA

Muoi Ho, an unmarried woman,	)	No. CV 11-324-TUC-FRZ (JJM)
	)	
Plaintiff,	)	<b>ORDER</b>
	)	
vs.	)	
	)	
Federal National Mortgage Association, et al.,	)	
	)	
Defendants.	)	

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Before the Court for consideration is Defendants' Motion to Dismiss and the Report and Recommendation of the United States Magistrate Judge.

This action, originally filed by Plaintiff Muoi Ho in the Arizona Superior Court in and for the County of Pima and removed to this Court pursuant to 28 U.S.C. § 1332, was referred to Magistrate Judge Jacqueline Marshall for all pretrial proceedings and report and recommendation in accordance with the provisions of 28 U.S.C. § 636(b)(1) and LRCiv 72.1 and LRCiv 72.2 of the Rules of Practice of the United States District Court for the District of Arizona, Local Rules of Civil Procedure.

Defendants Federal National Mortgage Association ("Fannie Mae"), Bank of America, N.A. ("BANA"), individually and as successor by merger to BAC Home Loans Servicing, L.P., and ReconTrust Company, N.A. ("ReconTrust") (collectively "Defendants") filed the present motion on July 22, 2011 to dismiss the Complaint filed in this action, which alleges five causes of action arising from the non-judicial foreclosure of the Plaintiff's home, as set forth in detail in the Report and Recommendation.

1       Following review of the Defendants' motion, Plaintiff's response in opposition  
2       thereto, Defendants' reply, and hearing oral argument on the foregoing, Magistrate Judge  
3       Marshall issued her Report and Recommendation on September 21, 2011, recommending  
4       that the District Court, after its independent review of the record, enter an order granting  
5       Defendants' motion to dismiss, and further granting Plaintiff leave to amend her claims  
6       alleging fraud.

7       The Report and Recommendation advised "the parties shall have fourteen (14) days  
8       from the date of service of a copy of this recommendation within which to file specific  
9       written objections with the District Court. *See* 28 U.S.C. § 636(b)(1) and Rules 72(b), 6(a)  
10      and 6(e) of the Federal Rules of Civil Procedure."

11      Plaintiff's Objections to the Report and Recommendations of the Magistrate Judge  
12      were timely filed on November 22, 2011, requesting the Court deny the Defendants' motion  
13      to dismiss in its entirety, or, in the alternative, grant Plaintiff at least sixty (60) days leave to  
14      conduct discovery and amend her Complaint.

15      Defendants filed a response thereto, requesting the Court adopt the Report and  
16      Recommendation granting the motion to dismiss, but further requesting that the Court  
17      dismiss Plaintiff's claims without leave to amend.

18      The Court finds, after *de novo* review of the matters presented, including the Report  
19      and Recommendation, Defendants' motion to dismiss, Plaintiff's response in opposition, and  
20      Defendants' reply, Plaintiff's objections to the Report and Recommendation and Defendants'  
21      response thereto, that the findings of the Magistrate Judge shall be accepted and adopted as  
22      the findings of fact and conclusions of law of the Court, with exception of the  
23      recommendation that Plaintiff be granted leave to amend.

24      The Court finds that Plaintiffs' conclusory allegations in relation to Plaintiff's fraud  
25      claims do not meet the specific content pleading requirements to comply with Rule 9(b) and  
26      cannot "be cured by the addition of facts consistent with those alleged in the complaint," as  
27      suggested in the Report and Recommendation. *See Silving v. Wells Fargo Bank, NA*, 800  
28      F.Supp.2d 1055,1074-75 (D.Ariz. 2011)("We have interpreted Rule 9(b) to mean that the

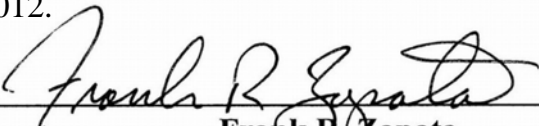
1 pleader must state the time, place, and specific content of the false representations as well  
2 as the identities of the parties to the misrepresentations.”)(citation omitted). “Plaintiff[‘s]  
3 lack of access to some facts does not excuse failure to adequately plead the facts [she does]  
4 have.” *Id.*

5 Accordingly,

6 IT IS ORDERED that Magistrate Judge Marshall’s Report and Recommendation  
7 (Doc. 23) is hereby ACCEPTED and ADOPTED as the findings of fact and conclusions of  
8 law by this Court, with the exception that leave to amend shall not be granted;

9 IT IS FURTHER ORDERED that Defendants’ Motion to Dismiss (Doc. 11) is  
10 GRANTED and this action is hereby dismissed; Judgment shall be entered accordingly.

11  
12 DATED this 28<sup>th</sup> day of March, 2012.

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15 Frank R. Zapata  
16 Senior United States District Judge  
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